



AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE (AN DLÍ COIRIÚIL)

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2019

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Table of Contents

	Page
1. Chairperson's Foreword	3
2. Function of the Mental Health (Criminal Law) Review Board	6
3. Reviews by the Board	6
4. Mental Health (Criminal Law) Legal Aid Scheme	9
5. Orders for Discharge	10
6. Most Serious Offence or Alleged Offence	11
7. Legal Proceedings	11
8. Financial Information	12
9. Procurement	12
10. Protected Disclosure	13
11. Governance and Internal Controls	13
 APPENDICES	
Appendix A - Number of Hearings per Month in 2019/2018	17
Appendix B - Number of Patients Reviewed per Diagnosis in 2019/2018	18
Appendix C - Number of Hearings by Type of Review in 2019/2018	19
Appendix D - Number of Hearings in 2019/2018 per Section of the Criminal Law (Insanity) Act 2006, as amended	20
Appendix E - Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel in 2019/2018	21
Appendix F - Number of Patients Conditionally Discharged in 2019/2018	22
Appendix G - Most Serious Offence or Alleged Offence	23

1. CHAIRPERSON'S FOREWORD

I am pleased as Chairperson of the Mental Health (Criminal Law) Review Board to present the Review Board's 2019 Annual Report, which is the 13th Annual Report of the Board. Before providing an overview of the Board's activities during 2019, I would first like to say that it was with great pleasure I accepted the invitation of the Minister for Justice and Equality, Mr. Charlie Flanagan, T.D., to continue as Chairperson of the Review Board, upon the expiry of my term of office in September 2019. I look forward to the continuing and interesting challenges which the work of the Review Board will undoubtedly bring over the next five years.

During 2019, the number of review hearings held by the Board increased slightly by comparison with the previous year. The Board held 198 reviews compared with 188 in 2018, reviewing the detention of 91 patients. Of the 91 patients whose detention was reviewed, five were granted a conditional discharge. By comparison in 2018, out of a total of 89 patients, six patients were conditionally discharged by the Board. In February 2019, the Clinical Director of the Central Mental Hospital informed the Board that he had recalled one conditionally-discharged patient to the hospital on the grounds that he had a reasonable belief the patient was in material breach of their Conditional Discharge Order.

The Board progressed to holding 31st and 32nd reviews into the detention of some patients in 2019.

Three applications for unconditional discharge were received by the Board in 2019. There were also two outstanding applications from previous years. Of the three applications received, the hearing of one application commenced in November and was adjourned for further consideration in 2020; one applicant is awaiting a hearing and the Board was informed that the other applicant is re-considering whether or not they wish to proceed with their application. The consideration of the two outstanding applications from previous years were further postponed at the request of the applicants.

In June 2019, at the invitation of Professor Harry Kennedy, the Review Board was pleased to participate in a study visit to Ireland by the Dutch *Advisory Board on Leave for Forensic Patients*. During the visit the Board met with the Dutch delegation and was interested to hear first-hand about the Dutch system with regard to patients who are detained under their hospital orders system. The Board made a presentation to the Dutch delegation outlining the function, powers and working of the Board. The Board found the exchange of information and comparison of systems operating in both jurisdictions interesting and informative.

On behalf of my colleagues, I would like to thank the Executive Clinical Director of the Central Mental Hospital Professor Harry Kennedy and the Clinical Director Dr. Brenda Wright for their assistance during the year. I also thank the multi-disciplinary teams in the hospital for their work in preparing psychiatric reports for patients prior to their review hearings. The Board is mindful that this work is time consuming for all involved. The Board is also aware that the normal routine of the hospital is disrupted on the day of review hearings. In that regard, the Board is appreciative of the assistance and co-operation of the consultant psychiatrists, nursing, therapists, social services and

administrative staff of the hospital. The Board would also like to take this opportunity to wish the staff and patients in the Central Mental Hospital well in the coming year with the planned move of the National Forensic Mental Health Service to its new location in Portrane. Having been located in Dundrum since 1850, the coming year will undoubtedly be a momentous one in the history of the hospital. The new complex will undoubtedly have huge benefits for patients, their families and staff. The Board looks forward to engaging with the Clinical Director in planning for the additional work of the Board that the move will bring about.

Once again, I would like to compliment the work of members of the Board's Legal Representatives Panel who continue to ably and conscientiously represent patients coming before the Board for review of their detention.

Finally, I wish to extend the Board's thanks to Mr. Greg Heylin, the former CEO of the Board who retired in May 2019, for his work on behalf of the Board during his term as CEO. I also thank Ms. Amanda McLoughlin who acted as interim CEO from May to September and I welcome Ms. Paula Connolly who joined the Board as CEO in September. I would also like to extend gratitude to Ms. Catherine Hayes and Ms. Ann Casey for their excellent and efficient service to the Board during the year.

Iarfhlaith O'Neill
Chairperson

April 2020

2. FUNCTION OF MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

The Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil) was established on 27 September 2006 under Section 11 of the Criminal Law (Insanity) Act 2006. The Board is statutorily independent in the exercise of its functions.

The Board is responsible for reviewing the detention of patients who have been referred to designated centres arising from a decision by the courts that they are unfit to stand trial or having been found not guilty of an offence by reason of insanity. Under the 2006 Act, as amended by the Criminal Law (Insanity) Act 2010, the Board has the power to order the continued detention of patients or to order either their conditional, or unconditional discharge. When coming to its decision, the Board must have regard to the welfare and safety of the patient and to the public interest

The Board also reviews the detention of prisoners, including military prisoners, who have been transferred to a designated centre suffering from a mental disorder. The Board can order their continued detention in a designated centre or their return to prison.

The Central Mental Hospital (CMH) is currently the only designated centre under the Act.

3. REVIEWS BY THE BOARD

As provided by the 2006 Act, the Board must review the detention of each patient at intervals of not greater than six months. Long-term patients usually have two review

hearings per year but some may have more because, outside of the regularly scheduled hearings, a review can be held on the initiative of the Board or at the request of a patient or the Clinical Director of the CMH. The Minister for Justice and Equality can direct the Board to hold a review into the detention of a prisoner who is involuntarily admitted to the hospital.

At any one time, there are between 80 to 90 patients detained in the Central Mental Hospital under the 2006 Act. The number of patients detained under the Act fluctuates because, apart from the longer-detained patients, patients are transferred from prison, either by consent or involuntarily, for care or treatment which is not available to them in prison. However, some of these patients may not come before the Board for review of their detention in the hospital as the Clinical Director, having consulted with the Minister for Justice and Equality, may transfer prisoners back to prison at any time.

The detention of 91 patients was reviewed by the Board in 2019, representing an increase of just of 2% in the number of patients whose detention was reviewed, compared with 89 patients in 2018. Of the 91 patients, 9 or 10% were female and 82 or 90% were male. The Board held a total of 198 review hearings compared with 188 the previous year, representing a 5% increase in the number of review hearings. Of the 91 patients, 66% had been diagnosed as suffering from schizophrenia, 19% were suffering from schizoaffective disorder and 15% were diagnosed with other disorders. This compares with 2018 when 67% of patients were diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 16% from other disorders. It should be noted that it is primarily the same core group of patients reviewed by the Board each year. (Appendices A and B refer).

The Board, for the first time in 2019 conducted 31st and 32nd reviews into the detention of some patients. Of the 198 review hearings, seven were a 31st review and two were a 32nd review. A total of 4% of the hearings were at 31st to 32nd review stage. 25% of hearings were at 1st to 5th review stage, compared with 27% in 2018. Of these, 10 reviews or 5% were a 1st review, compared with 2018 when there were 13 such reviews, which was 7% of the total. (Appendix C refers).

As in previous years, the majority of review hearings were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, having been found not guilty of an offence by reason of insanity. In 2019, 150 hearings, which is 76% of the total, were into the detention of patients committed under Section 5(2). The number in this category in 2018 was 144 which is also 76% of the total number of hearings that year. Again in 2019 the second largest number of review hearings was of patients detained under Section 15(2) of the Act, being prisoners transferred involuntarily to the Central Mental Hospital for care or treatment which could not be provided in prison. This group accounted for 11% of review hearings in 2019 compared with 13% in 2018. Uniquely in 2019, one patient was detained under two different Sections of the 2006 Act. The patient who was detained under Section 5(2), having been found not guilty by reason of insanity, was subsequently found guilty of another offence and detained under Section 15(1). While the patient is detained under two sections of the Act, for reporting purposes the patient's review hearing is included only under Section 5(2), as the detention is not reviewed separately under the two sections. However the Review Board takes both sections into consideration when it is reaching its decision. (Appendix D refers).

4. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Review Board is required by Section 12(1)(c) of the 2006 Act to assign a legal representative to each patient whose detention is the subject of review, unless the patient proposes to engage legal representation at their own expense. Having regard to this, the Board put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006, under which a panel of legal representatives was established and the legal fees for representation before the Review Board is provided for. Patients may if they wish decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage a non-panel solicitor at their own expense. The Board endeavours, for continuity for patients, having regard to the fact that they are suffering from a mental disorder, to assign the same solicitor to represent a patient at subsequent review hearings.

At the beginning of 2019 there were 26 solicitors on the Legal Representatives Panel. During the year, one solicitor was added to the Panel at the request of a patient who wished to be represented at their review hearing by the solicitor who had represented them in criminal proceedings. Three solicitors resigned from the Panel, reducing the number at the end of the year to 24.

The average number of cases assigned to solicitors on the Panel in 2019 was 7. The top quartile of solicitors was assigned an average of 13 cases each, the same as the previous year. The second and third quartiles combined were assigned an average of 7 cases each compared with 8 in 2018. The bottom quartile was assigned an average of one case each in 2019 and 2018. The members who resigned from the Panel are included in the figures for 2019 as they represented clients during the year. (Appendix E refers).

5. ORDERS FOR DISCHARGE

The Board approved the conditional discharge of five patients from the Central Mental Hospital in 2019, compared with six the previous year. The average duration of detention in the hospital for the conditionally discharged patients was 7 years. The two shortest durations averaged just over 2 years and the two longest averaged 11 years. It should be noted that the length of time a patient is detained in the hospital is neither a necessary nor a sufficient ground, in itself, for granting a conditional discharge. (Appendix F refers).

One patient was recalled from conditional discharge during 2019, the Clinical Director of the Central Mental Hospital having formed the opinion that the patient was in material breach of their conditional discharge order.

The Board received three applications for unconditional discharge in 2019 from patients who had been conditionally discharged for 12 months or more. Of these, the Board adjourned the hearing of one application, to be reconvened in 2020; one applicant is awaiting a hearing and the Board was informed that the third applicant is re-considering whether or not they wish to proceed with their application.

There were two outstanding applications for unconditional discharge from previous years, the consideration of which had been adjourned by the Board. The Board agreed to requests from both applicants to have the hearing of their application further postponed.

6. **MOST SERIOUS OFFENCE OR ALLEGED OFFENCE**

The type of offences, or alleged offences, which patients detained in the Central Mental Hospital in 2019 were charged with, or convicted of, included murder, attempted murder, manslaughter and assault causing serious bodily harm. Of the 91 patients whose detention was reviewed by the Board, 37 had been charged with, or convicted of murder. The majority of the victims of this offence, or alleged offence, were a family member of the patient. A total of 10 patients were charged with, or convicted of, attempted murder/ manslaughter/ death by dangerous driving. 24 patients were charged with, or convicted of assault causing harm/serious bodily harm and 6 with arson. Other offences include sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, trespass and possession of a knife with intent to cause harm, robbery, possession of knives and intimidation, and threat to set a Garda station alight. (Appendix G refers).

7. **LEGAL PROCEEDINGS**

As reported last year, the Court of Appeal delivered judgement in the appeal by the applicant of the High Court decision in judicial review proceedings against the Clinical Director of the Central Mental Hospital (*MC v. Clinical Director, Central Mental Hospital and Mental Health (Criminal Law) Review Board (Notice Party)*). The Court of Appeal in a judgement delivered on 18 January 2019 agreed with the High Court that the proceedings were moot (Court of Appeal Record No. 2016/472). An application for leave to appeal the decision of the Court of Appeal was granted by the Supreme Court in October 2019 as the Court was satisfied that the appeal raised an issue of general public importance relating to the circumstances in which a claim can be said to be moot. The Court also indicated that it would address, at case management, whether if the

applicant's appeal on the mootness issues were to succeed, in those circumstances could, or should, the Court proceed to determine the substantive issues. The appeal is scheduled for hearing by the Supreme Court in March 2020.

8. FINANCE INFORMATION

The Review Board is funded from Subhead B.10 of the Vote of the Office of the Minister for Justice and Equality. In 2019, the Review Board received a budget allocation of €401,000. The total expenditure from Subhead B.10 in 2019 was €375,000. The Review Board adheres to the Public Spending Code. The main expenditure items in 2019 are set out beneath:

Free Legal Aid	€103,984
Board members' fees	*€97,500
Chairperson's fee	**€88,593
Staff Pay	***€72,000
Legal costs	€5,761

*Includes fees for December 2018 which were paid in January 2019
Does not include fees for December 2019 which are paid in January 2020.

** The Chairman is paid an annual fee of €70,875 in quarterly instalments. The last payment for 2018 was paid in January 2019.

*** As part of the transformation programme in the Department of Justice and Equality, payroll costs for staff of the Review Board were moved to the Department's Administrative subhead with effect from September 2019.

9. PROCUREMENT

Tenders for Interpretation Services at Review Hearings

Thirteen, once-off, e-mail tenders were issued by the Review Board in 2019 for the provision of interpretation services at review hearings.

10. PROTECTED DISCLOSURE

The Review Board has adopted the Protected Disclosure Policy of the Department of Justice and Equality as its policy on protected disclosures in the workplace. In line with reporting requirements, it is confirmed that there were no protected disclosure reports received in 2019.

11. GOVERNANCE AND INTERNAL CONTROLS

Structure and Membership of the Review Board

The Mental Health (Criminal Law) Review Board is a quasi-judicial body, rather than a governance board, which reviews the detention of patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006. The Board consists of a Chairperson and any number of ordinary members as the Minister for Justice and Equality, having consulted with the Minister for Health, may require. The current Chairperson is a retired High Court Judge and there are three ordinary members, two of whom are consultant psychiatrists and one is a counsellor psychotherapist. All Board members are appointed by the Minister for a period of five years, as provided by the 2006 Act. Membership of the Board in 2019 and the date of appointment of members is set out beneath:

Member	Appointed
Mr. Justice Iarfhlaith O'Neill	September 2014 Re-appointed September 2019
Dr. Katherine Brown Consultant Psychiatrist	May 2017
Ms. Nora McGarry Counsellor Psychotherapist	September 2011 Re-appointed September 2016
Dr. Elizabeth Walsh Consultant Psychiatrist	January 2013 Re-appointed January 2018

Attendance at Hearings and Fees

The Review Board rarely convene, other than for hearings in the Central Mental Hospital. When reviewing the detention of patients, the Board sits in a panel of three, with the Chairperson and at least one consultant psychiatrist always on the panel.

Ordinary members are paid a fee of €250 per review hearing attended. The same fee is paid for attendance at hearings in connection with applications for unconditional discharge and applications to amend or vary conditions of discharge. In 2019 all Board members attended those hearings which they were scheduled to attend. Dr. Brown attended 104 hearings, Ms. McGarry attended 199 hearings and Dr. Walsh attended 95 hearings.

The Chairperson is paid an annual fee of €70,875. The Chairperson chairs all review hearings and hearings to consider applications for unconditional discharge and applications to amend conditions. The Chairperson also advises and guides the CEO in the management of the business of the Board and advises on any legal cases to which the Board is a party.

Employees

The Chief Executive Officer of the Review Board, Ms. Paula Connolly, is an Assistant Principal Officer in the Department of Justice and Equality who devotes a portion of her time to the duties of CEO of the Board. The CEO is responsible for the day-to-day management and administration of the business and resources of the Board. The CEO is not paid a separate salary for her work with the Review Board.

The Review Board is supported by a Higher Executive Officer and a Clerical Officer, seconded from the Department of Justice and Equality. The staff of the Review Board are civil servants and are paid the appropriate civil service pay rates for their grade.

Payroll processing and the payment of Board members' fees is provided by the Payroll Shared Services Centre of the Department of Public Expenditure and Reform. The processing of other payments is provided by the Financial Shared Services Centre of the Department of Justice and Equality.

Oversight and Internal Controls

An Oversight Agreement for 2019 was reached with the Department of Justice and Equality and signed on behalf of the Review Board by the CEO. In the Oversight Agreement it was agreed that, because of the narrow legislative functions of the Chairperson, the statutory independence of the Board and its very small size, the CEO, rather than the Chairperson, would furnish a Compliance Statement to the Minister in accordance with the *2016 Code of Practice for the Governance of State Bodies*.

Regarding compliance with the *Code of Practice*, the 'Comply or Explain' provision of the *Code* has been applied by the Department to the Review Board. In regard to internal controls and risk management, because of the Review Board's size, it is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee. Instead, alternative arrangements have been put in place to allow the Board have access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance. An assessment of the principal risks of the Review Board is carried

out on an annual basis by the CEO and any risks identified are included in the Board's Risk Register.

The Review Board's founding legislation does not require the production of Financial Statements. The Board, through the CEO, liaises with the Financial Shared Services Centre of the Department of Justice and Equality which reports on the Board's income and expenditure in the Department's monthly management reports. The monthly reports are kept under review by the CEO and procedures are in place to ensure that expenditure is authorised in accordance with the Department's guidelines.

Having regard to the size of the Review Board and the statutory basis for its remit which does not change unless legislation is amended, it is not deemed necessary for the Board to prepare a strategic plan. However, the Review Board publishes relevant statistics with regard to its output in its Annual Report which is submitted to the Department and is published on the Board's website.

The Review Board adheres to public service procurement policies and guidelines. Procurement competitions conducted by the Review Board are done in consultation with the Procurement Unit of the Department of Justice and Equality.

Note:

An administrative consolidation of the Criminal Law (Insanity) Act 2006, prepared by the Law Reform Commission; ([www.lawreform.ie/ fileupload/revisedacts/withannotations/en_act_2006_0011.pdf](http://www.lawreform.ie/fileupload/revisedacts/withannotations/en_act_2006_0011.pdf))

Procedures of the Mental Health (Criminal Law) Review Board

[http://www.mhclrb.ie/en/mhb/procedures%20of%20mental%20health%20\(criminal%20law\)%20review%20board.pdf/files/procedures%20of%20mental%20health%20\(criminal%20law\)%20review%20board.pdf](http://www.mhclrb.ie/en/mhb/procedures%20of%20mental%20health%20(criminal%20law)%20review%20board.pdf/files/procedures%20of%20mental%20health%20(criminal%20law)%20review%20board.pdf)

and

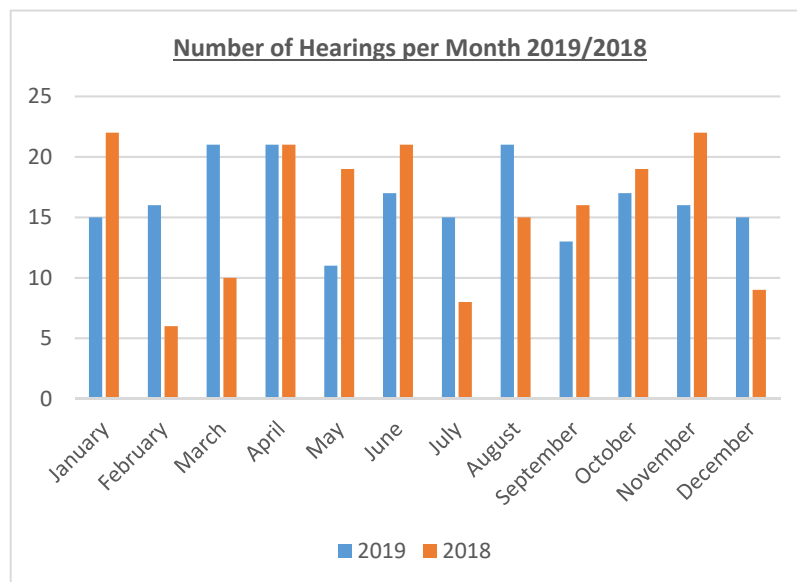
Terms and Conditions of the Mental Health (Criminal Law) Legal Aid Scheme 2006

[http://www.mhclrb.ie/en/mhb/terms%20&%20conditions%20of%20mh\(cl\)rb.pdf/files/terms%20&%20conditions%20of%20mh\(cl\)rb.pdf](http://www.mhclrb.ie/en/mhb/terms%20&%20conditions%20of%20mh(cl)rb.pdf/files/terms%20&%20conditions%20of%20mh(cl)rb.pdf)

are available on the Board's website (www.mhclrb.ie).

Number of Hearings per Month 2019/2018

Month	No. of Hearings 2019	% of 2019 Total	No. of Hearings 2018	% of 2018 Total
January	15	7%	22	12%
February	16	8%	6	3%
March	21	11%	10	5%
April	21	11%	21	11%
May	11	6%	19	10%
June	17	9%	21	11%
July	15	7%	8	4%
August	21	11%	15	8%
September	13	6%	16	9%
October	17	9%	19	10%
November	16	8%	22	12%
December	15	7%	9	5%
Total	198	100%	188	100%



Number of Patients Reviewed per Diagnosis in 2019/2018

Diagnosis	No. of patients reviewed 2019	% of 2019 Total	No. of patients reviewed 2018	% of 2018 Total
Schizophrenia	60	66%	60	67%
Schizo-Affective Disorder	17	19%	15	17%
Other Disorders	14	15%	14	16%
Total	91	100%	89	100%

Other Disorders include:

Bi-Polar Affective Disorder

Psychotic Depression

Autistic Spectrum Disorder

Asperger's Syndrome

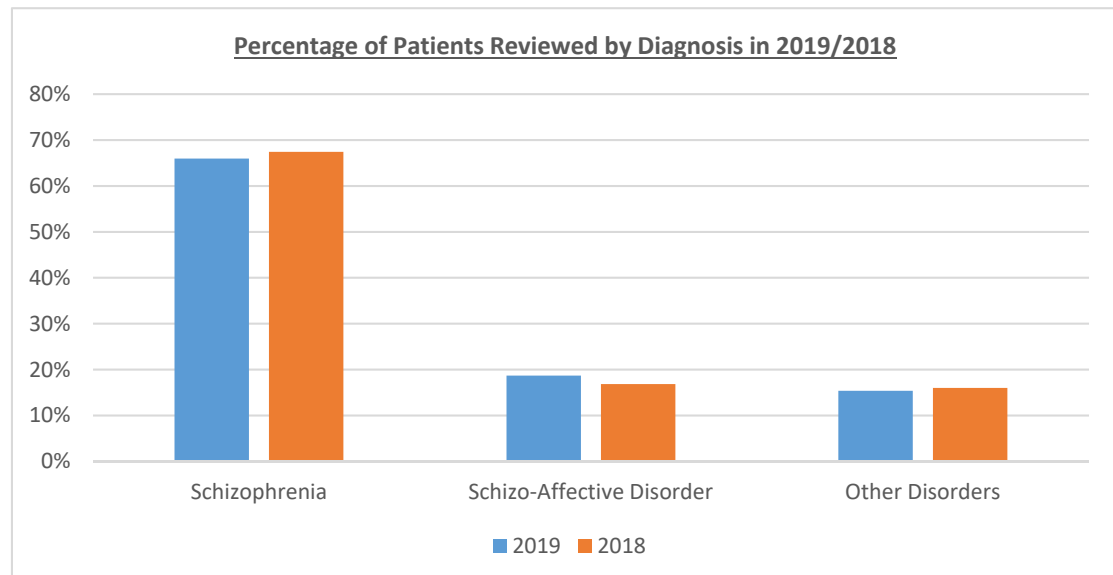
Affective Psychosis

Organic Personality Disorder

Organic Psychosis

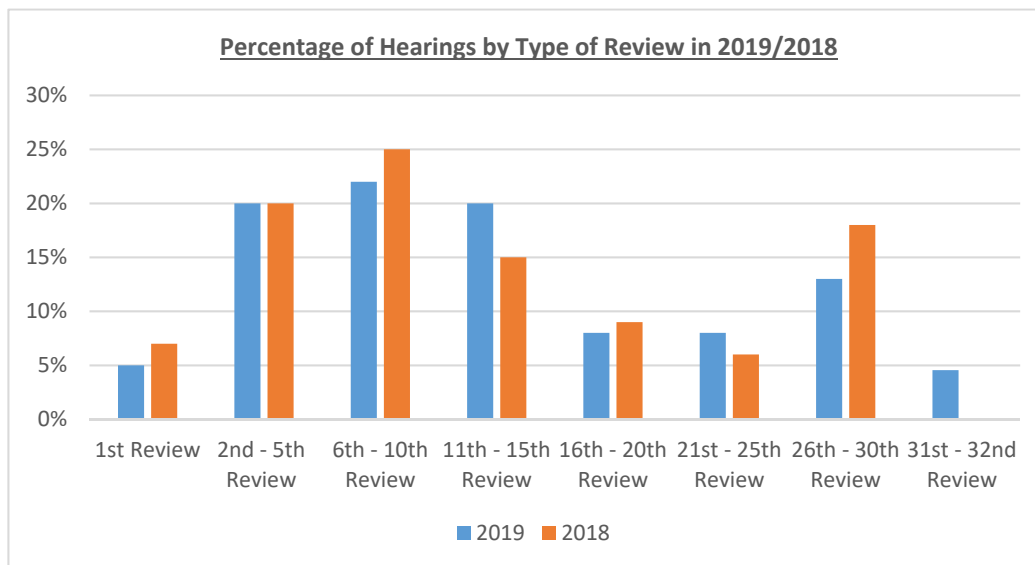
Recurrent Severe Depressive Disorder with Psychotic Features

Psychotic Episode/Acute Psychotic Episode



Number of Hearings by Type of Review in 2019/2018

Type of Review	No. of Reviews 2019	% of 2019 Total	No. of Reviews 2018	% of 2018 Total
1st Review	10	5%	13	7%
2nd - 5th Review	40	20%	38	20%
6th - 10th Review	43	22%	48	25%
11th - 15th Review	40	20%	28	15%
16th - 20th Review	16	8%	16	9%
21st - 25th Review	15	8%	12	6%
26th - 30th Review	25	13%	33	18%
31st - 32nd Review	9	4%		
Total	198	100%	188	100%

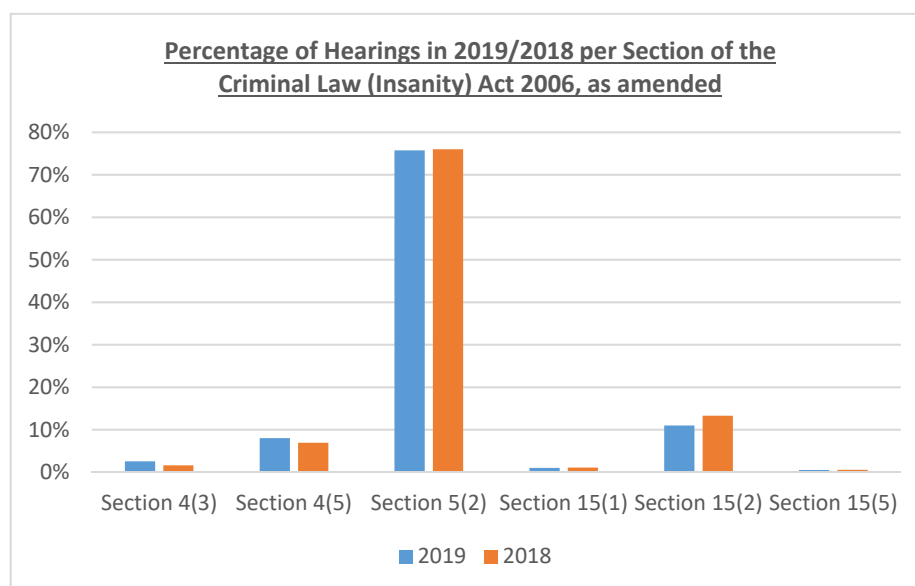


**Number of Hearings in 2019/2018 per Section of the
Criminal Law (Insanity) Act 2006, as amended**

Section of 2006 Act	No. of Hearings 2019	% of 2019 Total	No. of Hearings 2018	% of 2018 Total
Section 4(3)	5	3%	3	2%
Section 4(5)	17	8%	13	7%
Section 5(2)	150	76%	144	76%
Section 15(1)	2	1%	2	1%
Section 15(2)	23	11%	25	13%
Section 15(5)	1	1%	1	1%
Total	198	100%	188	100%

Note: One patient is detained under Section 5(2) and Section 15(1). The detention of that patient is counted under Section 5(2) only.

Section 4(3)	Unfit to Plead, District Court
Section 4(5)	Unfit to Plead, Other Court
Section 5(2)	Not guilty by reason of insanity
Section 15(1)	Voluntary transfer from Prison
Section 15(2)	Involuntary transfer from Prison
Section 15(5)	Continuation of voluntary transfer from Prison (after refusal of care or treatment)



**Average Number of Cases Assigned to Legal
Representatives on Legal Aid Panel in 2019/2018**

Year	No. of Legal Representatives on Panel	Average no. of cases assigned	Average no. of cases assigned Top Quartile	Average no. of cases assigned 2nd & 3rd Quartiles	Average no. of cases assigned Bottom Quartile
2019	27*	7	13	7	1
2018	27**	7	13	8	1

* At the end of 2019 there are 24 Panel members. During the year one additional member was appointed and three resigned. The members who resigned are included in the figures as they were assigned cases during the year.

** At the end of 2018 there were 26 members on the Panel (two additional members were appointed during the year and one resigned). The member who resigned is included in the figures as they were assigned cases during the year.

**Number of Patients Conditionally
Discharged in 2019/2018**

Month of Conditional Discharge Order	No. of Patients 2019	No. of Patients 2018
February		1
March	1	
April	1	1
June	2	2
July		2
November	1	
Total	5	6

**Most Serious Offence or Alleged Offence of patients whose
detention was reviewed in 2019**

Type of Offence or Alleged offence	No. of patients charged with, or convicted of offence	
Murder of which victim was family member of which victim was known to patient of which victim was stranger	37	20 10 7
Attempted Murder/Manslaughter/Death caused by dangerous driving of which victim was family member/known to patient of which victim was stranger	10	6 4
Assault causing harm/serious bodily harm of which victim was family member of which victim was known to patient of which victim was stranger	26	5 4 17
Arson	6	
Other	12	
Total	91	

Note

- 1) Patients convicted of, or charged with more than one offence/alleged offence, have been categorised according to the most serious offence/alleged offence.
- 2) In a minority of instances there was more than one victim of the offence with which a patient was charged, or convicted.
- 3) The category "**Other**" includes sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, trespass and possession of a knife with intent to cause harm, robbery, possession of knives and intimidation, threat to set a Garda station alight.